

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 92-11

In the Matter of)
)
Amendments to Section 1.773 of)
the Commission's Rules Regarding)
Pleading Cycle for Petitions)
Against Tariff Filings Made on)
14 Days' Notice)

COMMENTS

MCI Telecommunications Corporation (MCI) hereby provides its comments in response to the Commission's "Notice of Proposed Rulemaking" (NPRM) released June 1, 1992 in the afore-captioned proceeding.^{1/} The Commission is proposing to reduce, by one day, the deadline for protesting 14-day tariff filings and, by several days, the deadline for a reply by the filing carrier.^{2/} Additionally, the Commission is proposing that tariff protests and responsive carrier filings be "personally served," thereby removing as a factor the U.S. Postal Service.

The Commission is proposing this shortened pleading cycle so that the Bureau will have additional time "to evaluate fully arguments against the lawfulness" of tariffs filed on 14-days notice.^{3/} The effect of the changes would be to give the Bureau "four days to consider the pleadings received after the pleading

^{1/} FCC 92-215.

^{2/} The proposal is to reduce from four to three calendar days the deadline for replies. This could be more than a one day reduction because, under the current rule, intermediate "holidays," e.g., Saturdays and Sundays, are not counted.

^{3/} NPRM at para. 1.

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cycle closes."^{4/}

MCI does not oppose the proposed rule modifications, even though it will be affected adversely by the changes, whether as an entity challenging another carrier's tariff proposal or defending one of its own. As the Commission notes, the current rules, which have been in effect for over a decade now, are (and always have been) illogical in that "the pleading cycle for a 14-day tariff may end after the effective date of the tariff if a petition is served by mail,"^{5/} which is almost always the case. The only apparent reason why this has not proved to be a significant problem in the past is that non-dominant carrier tariffs are seldom challenged. With other carriers, notably the American Telephone & Telegraph Company, now allowed to propose legally questionable tariffs on 14-days notice, the environment has changed, and the problem apparently has manifested itself within the Commission.

Finally, MCI supports the proposal that personal service be permitted to be achieved by facsimile, with subsequent mailings to parties other than the Commission. This would be an effective


^{4/} Id at para. 4. It is hoped that the Bureau will use this additional time to construct decisions that contain reasoned explanations for the actions taken in disposing of contested tariffs. Certainly, no additional time would be required in connection with the single-page "form orders" that the Bureau routinely uses now in disposing of tariff challenges.

^{5/} Id at para. 3.

and less costly way to achieve same-day service.^{9/} To achieve this, Section 61.33 of the Commission's Rules would need to be amended to include a provision that carrier letters of transmittal contain a facsimile number for purposes of service, and Section 1.773 of the Rules would need to be amended to include a provision that those protesting a proposed tariff include a facsimile number through which they can be served with the filing carrier's reply.

The Commission respectfully is requested to take these comments into account when it considers adoption of the subject rule modifications.

By: _____


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Dated: July 23, 1992

^{9/} Absent facsimile, it would appear to be impossible to achieve same-day service, unless the parties involved were each physically located in, say, Washington, D.C. Thus, "overnight" delivery would be the only way to achieve true "personal service" in the absence of facsimile use.